

# Office Action Summary

Application No.

09/963,970

Applicant(s)

RYAN ET AL.

Examiner

Tam Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-14, 18-26, 28, 29, 31, 36 and 37 is/are rejected.
- 7) ☐ Claim(s) 15-17, 27, 30 and 32-35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4 & 5.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 1-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected non elected Invention Group I, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3. A telephonic correspondence was made on February 2, 2004 with the applicant to confirm examination of Invention group II, Claims 11-37.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-14, 18-26, 28, 29, 31, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teckenbrack (4,807,856).

2. As to claims 11, 36 and 37, Teckenbrock discloses an exercise device having a frame that includes a vertical support member (38), a seat post (24), a seat (54), a seat adjustment mechanism including a rack (62), a latch mechanism having a latch member (98) with a first surface adapted for engagement with horizontal surface of said teeth, and a release mechanism including a release handle (134) as substantially claimed (see Figs. 1-10 and Col. 4, lines 4-9). Teckenbrock does not disclose that the exercise device is stationary. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to utilize this seat adjustment mechanism on a plurality

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of stationary and non-stationary exercise devices since both types of devices would equally benefit from such a mechanism.

3. As to claim 12, Teckenbrock discloses a modified exercise device as described above. Teckenbrock further discloses that the release mechanism includes a shaft (114) rotatably secured to said support member and engaged with said latch member, and a bracket (100) attached to said release handle and said shaft such that the handle effects the shaft to rotate to disengage the latch from the teeth (see Figs. 1-10).

4. As to claim 13, Teckenbrock discloses a modified exercise device as described above (see discussion of claim 11). Teckenbrock further discloses a biasing member (102) as substantially claimed (see Fig. 4).

5. As to claim 14, Teckenbrock discloses a modified exercise device as described above (see discussion of claim 11). Teckenbrock further discloses a latch support bracket (36) secured to said support member (38), a shaft (106) rotatably supported by said latch support bracket, a release handle bracket (100) attached to said release handle and shaft such that when the release handle is pulled, the latch member (98) is rotated away from the rack as substantially claimed (see Fig. 4).

6. As to claims 18 and 19, Teckenbrock discloses a modified exercise device as described above (see discussion of claim 11). Teckenbrock further discloses that the rack is secured within a channel along the seat post (see Fig. 4). Teckenbrock does not disclose that the teeth are spaced approximately one half inch apart. However, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to space the teeth apart at varying distances including one half inch to provide the user

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with multiple locations at adequate increments to comfortably adjust the height of the seat.

7. As to claim 20, Teckenbrock discloses a modified exercise device as described above (see discussion of claim 11). Teckenbrock further discloses a guide assembly that includes a stabilizer arm (80) and a bearing surface (at the bottom of the stabilizer arm) (see Fig. 2).

8. As to claims 21-26, Teckenbrock discloses an exercise device as substantially claimed (see discussion of claims 11-14 and 18-20).

9. As to claims 28 and 31, Teckenbrock discloses a modified exercise device as described above (see discussion of claims 20 and 26). Teckenbrock further discloses a guide assembly that includes a bumper/plug (76) (see Fig. 2).

#### ***Allowable Subject Matter***

10. Claims 15-17, 27, 30, and 32-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lin '249

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Walsh '557

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on Monday -Friday, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 703- 308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 20, 2004

NICHOLAS D. LUCCHESI  
SUPERINTENDING EXAMINER  
TECHNOLOGY CENTER 3700